

**INTERLOCAL AGREEMENT BETWEEN ST. LUCIE COUNTY AND
CITY OF PORT ST. LUCIE**

THIS INTERLOCAL AGREEMENT ("Agreement") shall be effective on the 1st day of October, 2010 (the "Effective Date"), by and between **ST. LUCIE COUNTY**, a political subdivision of the State of Florida, having an office and place of business at 2300 Virginia Avenue, Fort Pierce, Florida, 34982 (hereinafter referred to as the "County") and the **CITY OF PORT ST. LUCIE**, a Florida municipal corporation, having an office and place of business at 121 SW Port St. Lucie Blvd., Port St. Lucie, Florida 34984 (hereinafter referred to as the "City").

WITNESSETH:

WHEREAS, the County and the City (collectively, the "Parties") have evaluated their options for the collection and disposal of the solid waste generated by the residents and businesses within the County and the City; and

WHEREAS, the County and the City wish to use environmentally-sound, efficient, and economical methods to manage their solid waste; and

WHEREAS, the County currently owns, operates and maintains a solid waste management system (the "System") that is designed to handle the solid waste generated by all of the residents and businesses in the County and the City; and

WHEREAS, the City wishes to use the County's System for the management and disposal of the City's solid waste;

WHEREAS, the City is willing to deliver its solid waste to the County's System, and the County is willing to accept the City's Municipally Collected Solid Waste for disposal; and,

WHEREAS, the Parties agree to act in good faith, work together in a cooperative manner, and take all necessary and appropriate actions to effect the purpose and goals of this Agreement, pursuant to their respective lawful authority.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and of the undertakings of each Party to the other, the Parties do hereby promise and agree as follows:

**ARTICLE I
DEFINITIONS**

The following terms shall be defined in the manner set forth below. If a term is not defined in this Agreement, the definitions in Section 403.703, Florida Statutes (2010), and Section 62-701.200, Florida Administrative Code, shall be used to supplement the definitions contained herein. If there is conflict between a definition contained herein and any other definition, the definitions contained herein shall control when construing this Agreement.

JOSEPH E. SMITH, CLERK OF THE CIRCUIT COURT
SAINT LUCIE COUNTY
FILE # 3546465 12/30/2010 at 08:09 AM
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RECORDING: \$69.50

1.1 **"Class I Solid Waste"** shall mean all non-hazardous solid waste that may be lawfully placed in a Class I Landfill for disposal, except yard trash, construction and demolition debris, white goods, tires, septage, and special waste. Class I Solid Waste does not include any type of solid waste that may not be placed in the County's Class I Landfill for disposal under federal, state or local regulations.

1.2 **"Class III Solid Waste"** shall mean all non-hazardous solid waste that may be lawfully placed in a Class III Landfill for disposal, including construction and demolition debris, yard trash, trees, tree stumps, building materials, and packaging materials.

1.3 **"Construction and Demolition Debris"** means materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project, including such debris from construction of structures at a site remote from the construction or demolition project, and including rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project. Mixing of Construction and Demolition Debris with other types of Solid Waste, including material from a construction or demolition site which is not from the actual construction and demolition of a structure, will cause it to be classified as other than Construction and Demolition Debris.

1.4 **"County Solid Waste Plan"** shall mean the County-wide solid waste management and disposal program adopted by the Board of County Commissioners.

1.5 **"Fiscal Year"** shall mean the fiscal year of the County, which currently begins on October 1 and ends on September 30 of the following calendar year.

1.6 **"Municipally Collected Solid Waste"** shall mean solid waste that is generated within the boundaries of the City and collected by (a) the City's employees, (b) a person under contract to the City for the collection of such waste, or (c) a person holding a franchise, license, or permit issued by the City for the express purpose of collecting, storing, transporting, and disposing of such solid waste. Municipally Collected Solid Waste shall not include Recyclable Materials disposed of in a Recyclable Materials Container as defined herein.

1.7 **"Person"** shall mean any individual, firm, corporation, partnership, trust, governmental agency, or any other entity, or any group of such persons.

1.8 **"Per Ton Fee"** shall mean the fee adopted by the County by resolution for the disposal of one ton of Class I Solid Waste, Class III Solid Waste, or other type of Solid Waste, as established by County ordinance.

1.9 **"Point of Entry into the System"** shall mean the County's facilities located at 6120 Glades Cut-Off Road, St. Lucie County, Florida.

1.10 **"Recovered Materials"** means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal.

1.11 **"Recyclable Materials"** shall mean those materials which are capable of being recycled and are placed in Recyclable Materials Containers, including but not limited to, newspapers and all inserts, magazines, #1 P.E.T. and #2 H.D.E.P. plastic bottles, aluminum cans, steel cans, glass bottles and jars, cereal boxes and cardboard packaging, corrugated cardboard, and non-hazardous aerosol cans.

1.12 **"Recyclable Materials Container"** shall mean those containers used by residential and commercial customers to collect recyclable materials for pick up by a waste hauler.

1.13 **"Solid Waste"** shall mean garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations. Solid Waste does not include Hazardous Waste or Recovered Materials.

1.14 **"Special Waste"** shall mean solid waste that can require special handling and management, including but not limited to white goods, waste tires, used oil, lead acid batteries, construction and demolition debris, ash residue and yard trash. Special waste does not include biological waste.

1.15 **"System"** shall mean the County's overall solid waste management and disposal system, including active and closed facilities, and every aspect and component thereof (including, but not limited to: equipment; transfer, recycling, and resource recovery facilities; and solid waste disposal sites), whether acquired, constructed, or operated, or to be acquired, constructed or operated, by the County or its agent, designee, or contractor, in connection with the County Solid Waste Plan. In the event the County is determined to be responsible for post-closure costs for abandoned landfills operated by entities other than the County or the City, then the County agrees not to charge the City or its residents for those costs, unless the costs are borne by all residents of the County, as appropriate.

ARTICLE II

Reserved.

ARTICLE III

COUNTY UNDERTAKINGS AND CITY DELIVERIES TO THE SYSTEM

3.1 **Commitment to Accept Solid Waste and Limitation on Fees.** In consideration of the City's agreement to deliver its Municipally Collected Solid Waste to the System, commencing on the Effective Date of this Agreement and continuing for the term of this Agreement, the County agrees to accept, at the Point of Entry into the System, and dispose of the Municipally Collected Solid Waste of City for the Per Ton Fees described in Article 4, below.

3.2 **Commitment to Deliver.** In consideration of County's agreement to maintain capacity in its System to accommodate the City's Municipally Collected Solid Waste, the City agrees that, commencing on the Effective Date of this Agreement and continuing for the term of this Agreement, the City will deliver, or cause to be delivered, all of its Municipally Collected Solid Waste to the Point of Entry into the System, and the City shall pay, or cause to be paid, all of the fees required pursuant to this Agreement. This Commitment to Deliver does not include Recyclable Materials that are placed in Recyclable Materials Containers. In addition, Construction and Demolition Debris from LEED Certified projects within the City

is currently taken to a third party facility pursuant to a contract between the City's franchisee and the accepting facility. Nothing herein shall affect any pre-existing contract for the handling of such Construction and Demolition Debris. However, City shall encourage its franchisee to consider using the County System for said Construction and Demolition Debris upon termination of any preexisting contract.

ARTICLE IV **CHARGES AND PAYMENTS**

4.1 Payment of Fees by City's Franchisee or Permittee. Commencing on the Effective Date of this Agreement and continuing for the term of this Agreement, the City shall cooperate with the County and use its best efforts to ensure that the City's franchisee or permittee shall pay on a monthly basis the then current Per Ton Fee charged to the City's franchisee for all solid waste delivered to the Point of Entry into the System. The Per Ton Fee shall be determined annually by the County in accordance with the criteria set forth below.

4.2 Basis of Fees for the City. The County shall operate the System as an enterprise fund. The Per Ton Fee for solid waste delivered to the System shall be set such that the gross revenues accruing to the County from the operation of the System shall be sufficient only to defray all County expenses, costs, and obligations relating to the System, including but not limited to: (a) fixed costs associated with (1) design, (2) construction, (3) alterations, renewals, replacements, enlargements, and additions, (4) modifications, (5) repayment of borrowed capital, including interest and trustee fees, (6) fixed administration, (7) fixed overhead, (8) alternate and/or emergency disposal, and (9) closing, capping, and final grading of the County's present landfills; and (b) variable costs, consisting of the expenses associated with (1) operations, (2) maintenance, and (3) repair, including long term and post-closure care and maintenance. The Per Ton Fee may be set at levels that will provide required debt service coverage on borrowed capital in accordance with the proceedings authorizing the borrowing of such capital.

4.3 Maximum Fee. During the first five (5) years of the term of this Agreement, the County covenants and agrees that the Per Ton Fee for the disposal of the City's Municipally Collected Solid Waste shall not exceed forty-one and 0/100 (\$41.00) dollars per ton for Class I solid waste, twenty-six and 0/100 (\$26.00) dollars per ton for yard trash and twenty-nine and 0/100 (\$29.00) dollars per ton for construction and demolition debris, unless (a) a federal, state or local law (excluding action by the County or a County agency) not in existence on the date of this Agreement shall impose conditions on the System that increases the County's cost to operate the System or (b) the rate of inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) exceeds ten (10%) percent in any one calendar year (January 1 - December 31). In the event that either (a) or (b) occurs, the Per Ton Fee shall be adjusted to reflect such change. During the remaining term of this Agreement, the County covenants and agrees that the Per Ton Fee for disposal of the City's Municipally Collected Solid Waste, including the City's Class I Solid Waste and Construction and Demolition Debris, shall not exceed the amount necessary to cover all costs identified in Section 4.2. If any federal, state or local law or agency action (excluding action by the County or a County agency) in the future shall invalidate, supersede or preempt this Agreement, or impose conditions on the System that will increase the County's cost to operate the System, the Per Ton Fee shall be adjusted to reflect such change.

4.4 Revenue Sharing. The County shall pay to the City a portion of the annual net revenues (if any) derived from the County's sale of recovered materials, the County's sale of landfill gas, the franchise fees collected by the County, and the promotional fees paid to the County by the County's franchised waste collector ("Revenue Sharing Payment"). The total amount of the Revenue Sharing Payment owed to the City

shall be calculated each October by multiplying (a) the County's net revenues from such sales and fees during the County's prior fiscal year by (b) a fraction, the denominator of which is the total amount of solid waste delivered to the County's System from all sources and the numerator of which is the total amount of solid waste delivered to the County's System by the City and its agents. The Revenue Sharing Payment shall be delivered to the City annually in October of each year.

4.5 Advance Payments. As consideration for entering into this Agreement, the County shall pay and the City shall receive an advance payment of Two Hundred and Forty Thousand Dollars (\$240,000.00) within thirty (30) days after this Agreement is executed by the City and County. This advance payment shall constitute the Revenue Sharing Payment on the portion of net revenues owed to the City pursuant to this Agreement for Fiscal Year October 2010 through September 2011. Thereafter, the Revenue Sharing Payment owed to the City shall be calculated as set forth in Section 4.4 with the next payment due in October 2012.

ARTICLE V

ACCOUNTING, WEIGH SCALES, RECORDS & LOCAL OPERATIONS

5.1 Accounting and Audit. The County shall keep separate accounts for its administration of the System, and such accounts shall be maintained apart from the County's accounts for the County's general operations and general revenue fund. The County will keep proper books of record and accounts, in accordance with generally accepted accounting principles, consistently applied, for the System. Such books and records, together with all documents and materials relating to the System (other than such as may be subject to legal privilege), shall be available for inspection by City at all reasonable times. The County shall cause such enterprise fund to be audited annually by independent, certified public accountant(s) and shall provide a copy of such audit to the City, if requested.

5.2 Weigh Scales and Records. The County has weigh scales and other methods appropriate for determining the quantity of solid waste delivered to the Point of Entry into the System. The County will make and keep appropriate records of such deliveries. These records may be inspected by the City at any reasonable time, and copies of the records shall be provided to the City on a monthly basis, if requested.

5.3 Local Operations. After signing this Agreement, the City shall not construct, enlarge, operate, or contract for the use of any facility for the transfer, processing, treatment, and/or disposal of any Municipally Collected Solid Waste, except as the County may expressly agree to in writing. In addition, City shall take all such action as may be necessary to ensure that all of its Municipally Collected Solid Waste shall be delivered to the Point of Entry into the System. However, nothing herein shall prevent the City from disposing of or allowing the disposal of Recyclable Materials to a recycling facility chosen by the City. All proceeds from Recyclable Materials shall remain the property of the City.

5.4 Responsibility for Collection Costs. The City, and/or its franchisee(s) and permittee(s), shall be solely responsible for and shall bear the total cost, expense and other obligations associated with the collection and transportation of the solid waste to its Point of Entry into the System.

ARTICLE VI
FURTHER ASSURANCES

6.1 Additional Actions. During the term of this Agreement, the Parties shall take all such actions as may be necessary or appropriate to carry out the purposes of this Agreement, including, without limitation, the enactment of ordinances, legislation, resolutions, and the like. In addition to the foregoing and without limitation thereof, to the extent that any fees to be paid to the County pursuant to this Agreement shall or may be pledged in connection with the financing of any portion of the System, the County and City shall use their best efforts to defend, preserve and protect such pledge of such fees.

6.2 Cooperation. The County and the City shall each use their best efforts and shall cooperate in good faith as may be necessary or appropriate to carry out the purposes of this Agreement.

6.3 Previous Agreements. Upon the Effective Date, this Agreement shall supersede all prior agreements between the Parties pertaining to solid waste disposal.

ARTICLE VII
MISCELLANEOUS

7.1 Effect of Breach. Each Party recognizes that the other is entitled to bring suit for injunctive relief, mandamus, or specific performance, or to exercise other legal or equitable remedies, to enforce the obligations and covenants of each Party hereto.

7.2 Assignability. The County may assign or pledge its right to receive payments under this Agreement in relation to the financing of the System but no other assignment of this Agreement shall be authorized or permitted by either Party.

7.3 Waiver not to be Construed. No waiver by the County or City of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term of condition, nor shall a waiver of any pledge be deemed to constitute a waiver of any subsequent pledge (whether of the same or of a different section, subsection, paragraph, clause, phrase, word, or other provision of this Agreement) required of it under this Agreement or by law. The failure of either Party to insist in any one or more instances, upon strict performance of any of the terms, covenants, agreements, or conditions in this Agreement shall not be considered to be a waiver or relinquishment of such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

7.4 Amendments. This Agreement being for the benefit of the Parties, this Agreement may not be substantially amended without the concurrence of both Parties and any such amendment shall be only by written agreement, duly authorized and executed. This writing represents the entire agreement between the Parties and any modification or amendment shall be in writing and duly executed by the Parties.

7.5 Severability. If any provision, paragraph, sentence, clause, or word of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability or such shall not affect the remainder of this Agreement, and this Agreement shall be construed and enforced, consistent with its expressed purposes, as if such invalid and unenforceable provision, paragraph, sentence, clause, or word had not been contained herein.

7.6 Duplicate Originals. This Agreement may be executed in two or more counterparts, any of which shall be regarded for all purposes as duplicate originals.

7.7 Notices. All notices required hereunder to either Party shall be in writing and sent by Certified Mail, Return Receipt Requested to:

As to the County:

St. Lucie County Administrator
2300 Virginia Avenue
Administration Annex
Fort Pierce, FL 34982

With a Copy to:

St. Lucie County Attorney
2300 Virginia Avenue
Administration Annex
Fort Pierce, FL 34982

As to the City:

City Manager
City of Port St. Lucie
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984

With a Copy to:

City Attorney
City of Port St. Lucie
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984

7.8 Force Majeure. A delay or failure of performance by a Party shall not constitute a default hereunder and shall not give rise to any claims for damages, if and to the extent that such delay or failure is primarily caused by an event of Force Majeure, as described in subparagraphs (a) through (j), below, and the event of Force Majeure is (1) beyond that Party's reasonable control and (2) materially, substantially and adversely affects that Party's ability to perform its obligations under this Agreement. An event of Force Majeure shall mean: (a) acts of God, including by way of example and not limitation, hurricanes, lightning, earthquake, fire, severe weather conditions, or flood; (b) epidemic; (c) acts of terrorism or a public enemy; (d) insurrection or civil disturbance; (e) strike or labor disturbance; (f) condemnation or other taking by any governmental body; (g) change in any applicable law, regulation, rule, ordinance or permit condition, or an administrative, judicial or other authoritative interpretation or enforcement thereof; (h) an order, judgment or other binding determination of a federal or state administrative agency or governmental body (excluding St. Lucie County); (i) the suspension, interruption, denial or failure of renewal or issuance of any permit, license, consent, authorization or approval; and (j) any other event, act or condition that both Parties mutually agree should be deemed to be an event of Force Majeure. A Party whose performance is affected by an event of Force Majeure shall give written notice thereof to the other Party as soon as it is reasonably practicable and further shall use its best efforts to immediately remove or overcome the impediment to its performance under this Agreement.

ARTICLE VIII

TERM OF AGREEMENT

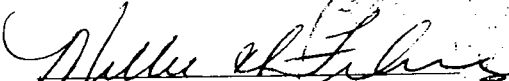
8.1 Term. This Agreement shall remain in effect and be binding on the Parties from the Effective Date of October 1, 2010 until September 30, 2020. This Agreement will automatically renew for an additional ten (10) years until September 30, 2030, upon the mutual agreement of the Parties. In addition, this Agreement may be amended in writing to address material changes in circumstances affecting the disposal or treatment of Municipally Collected Solid Waste and any provision herein or affected thereby, upon mutual agreement of the Parties.

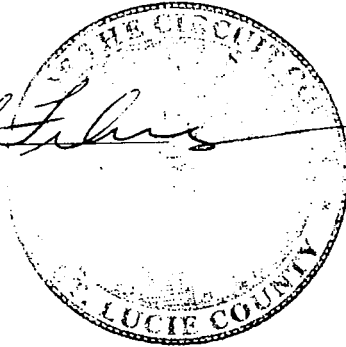
8.2 Termination. Neither the County nor the City shall have the right to terminate this Agreement unilaterally. If there is a breach or default in the obligations of one Party to another, this

Agreement may at any time be enforced by either Party by using any other remedies available at law or in equity, including but not limited to specific performance.

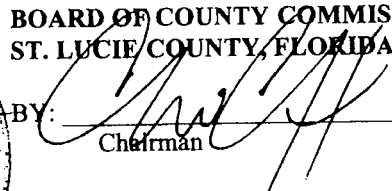
8.3 This Agreement shall be signed by both Parties and filed with the Clerk of the Circuit Court of St. Lucie County, Florida, prior to the Effective Date.

ATTEST:

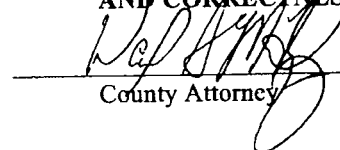

Deputy Clerk



BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA

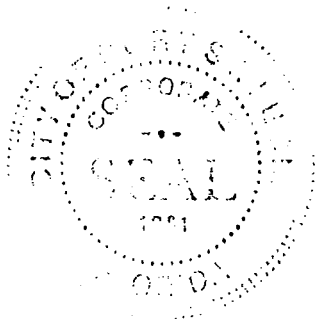
BY: 
Chairman

APPROVED AS TO FORM
AND CORRECTNESS:

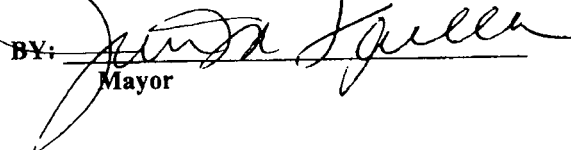

County Attorney

ATTEST:

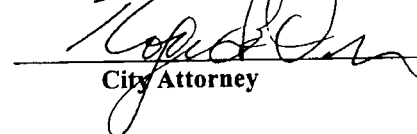

Clerk



CITY OF PORT ST. LUCIE

BY: 
Mayor

APPROVED AS TO FORM
AND CORRECTNESS:


City Attorney